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and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1993

Addendum

BENIN*

[12 February 2001]

* This document contains the initial report of Benin which was due on 10 April 1993.

Document HRI/CORE/1/Add.85 contains information submitted by Benin in accordance with the guidelines for initial reports of States parties.

The annexes to this report are available for consultation in the secretariat.

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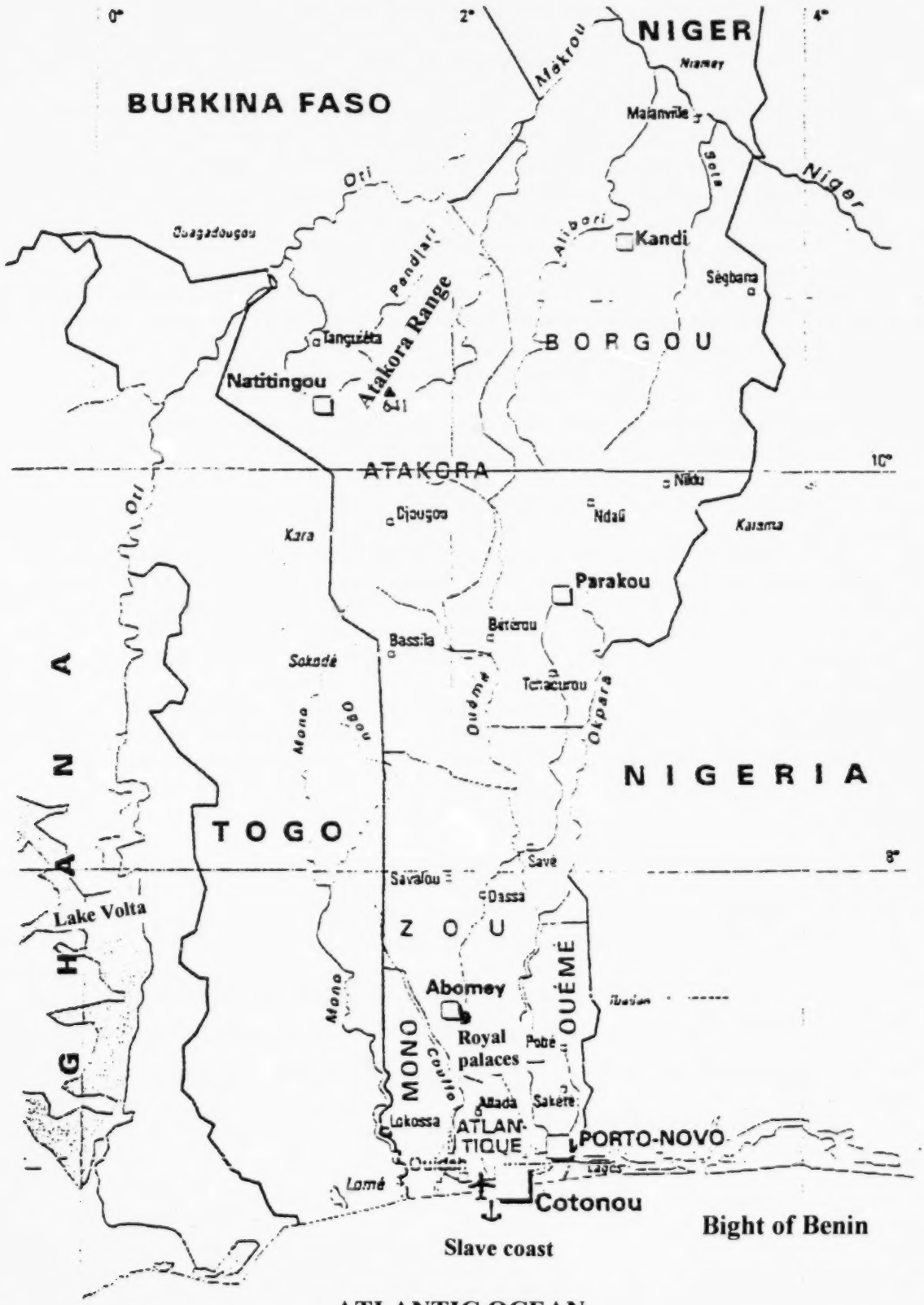
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ATLAN-TIQUE
PORTO-NOVO
Lagos
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Cotonou
Bight of Benin
Slave coast
ATLANTIC OCEAN

Introduction

A. Land and people

1. Geographical situation

1. Benin resembles an arm reaching out of the sea and stretching 700 km towards the Sahel, where it forms a large fist 325 km wide. It has a surface area of 114,763 km². The country is bounded on the east by Nigeria, on the west by Togo, on the south by the Atlantic Ocean, with a 120-km coastline, and on the north by Burkina Faso and the Niger.

2. Relief and climate

2. Benin's relief is relatively flat, consisting chiefly of peneplains and plateaux. The land rises gradually from the sedimentary areas of the south to the ferrallitic and ferruginous plateaux in the centre and the north. The Atakora mountains, which reach a height of roughly 600 m, form the reservoir from which most of the country's watercourses flow. The Ouémé, at approximately 450 km, is the longest river. Benin's climate is warm and humid. The south has a subequatorial climate, with two rainy seasons and two dry seasons, while the north has a Sudanese climate, with one relatively long dry season and one rainy season.

3. People

3. Benin has an estimated population of 5.7 million inhabitants, with a natural growth rate of 3.2 per cent, which is somewhat high in comparison with least developed countries as a whole. According to a 1996 population and health census, the fertility rate, at 6.1 children per woman, is one of the highest in subequatorial Africa. The population is very young, with women comprising 51 per cent of the total. Nearly half the population is under the age of 15, and 46 per cent are between the ages of 15 and 59.

4. The main diseases affecting children in particular are malaria, acute respiratory infections and diarrhoeal disease. Their prevalence is aided by the lack of clean drinking water and poor sanitary conditions. Life expectancy is 54.2 years (56.6 years for women and 51.8 years for men).

5. The country's population is distributed unequally over six departments, which are divided into urban districts and sub-prefectures. Some 70 per cent of the population live in the south (Atlantique: 21 per cent; Ouémé: 17.8 per cent; Zou: 16.7 per cent; Mono: 13.8 per cent), and population is close to 250 inhabitants per km².

6. There are 42 ethnic groups speaking over 50 languages in the country. The most important languages are:

- Fon, the main language in the south, spoken by 42.2 per cent of the population;
- Adja, spoken by 15.6 per cent of the population;

- Yoruba, spoken by 12.1 per cent of the population;

- Dendi, a fairly widespread lingua franca in the north;

- Bariba, spoken by 8.6 per cent of the population.

7. Several religions are practised in Benin: animism (35 per cent), Christianity (35 per cent), Islam (20.6 per cent), other religions (1.9 per cent) and unspecified religions (0.7 per cent). Benin also has many foreign residents who often form communities that are integrated in the indigenous population. African communities include Nigerians, Togolese, Ghanaians, people from the Niger, Senegalese and Malians. There are also Syrians, Lebanese and Asians, who are chiefly involved in trade. Nationals of non-African countries work for United Nations agencies or have settled in Benin on their own.

B. Political, social and economic situation

1. Political situation

8. After two decades of socialist revolution, Benin is currently experiencing a period of democracy which is an indication that the institutions set up at the time of the Active Forces of the Nation Conference held from 19 to 28 February 1990 are functioning properly. President Nicéphore Dieudonné Soglo's five-year term of office came to an end in April 1996 when a coalition Government formed of the parties that had backed the candidature of President Mathieu Kérékou took office. The new Government made changes in some ministerial departments and set out, in its programme of action, its political orientation and its vision of a State governed by the rule of law.

9. The current government programme focuses on:

- Strengthening democracy, the rule of law and national development;

- Consolidating national unity;

- Developing the economy and increasing employment;

- Implementing administrative reform;

- Environmental protection.

10. Implementation of this programme will:

- Ensure respect for the Constitution, human rights and civil liberties;

- Ensure that legal and judicial safeguards are in place;

- Strengthen democracy through: draft legislation dealing with the status of opposition parties; the development, with the help of political parties, the press and trade unions, of a support structure for their functioning; the dismantling of monopolies in the broadcast media; and the preparation of a public education programme to teach democracy;

- Identify and implement public security and defence plans;

- Maintain territorial integrity;

- Strengthen international cooperation for development.

11. The Ministry of Justice and Legislation has become the Ministry of Justice, Legislation and Human Rights, with new departments including the Department of Human Rights (DDH) and the Department of Judicial Protection of Children and Youth (DPJEJ). The Ministry's plan of action calls for a programme for the promotion and protection of human rights which seeks, inter alia, to promote human rights by means of a national campaign to disseminate the Constitution and texts dealing with human rights and civil liberties in order to make the public familiar with them and ensure that they are respected by the civil service. The campaign, which is now under way, draws on every possible channel of communication and makes maximum use of the mass media. It is to be evaluated in the coming months.

2. Social and economic situation

12. Since the advent of democracy in February 1990, Benin has undergone economic liberalization. The country is now implementing its third structural adjustment programme. These programmes, which are based on macroeconomic stability and the implementation of medium-term sectoral policies and strategies, have somewhat neglected the social sectors. The economic and social situation has worsened with the devaluation of the CFA franc in January 1994.

13. Agriculture, the country's principal economic activity, is awaiting reorganization under a policy that will ensure self-sufficiency in food for all and enable the secondary and tertiary sectors to develop in harmony.

14. The economic growth of recent years has yet to prove conclusive, since the current balance of payments shows a deficit of 8.6 per cent of gross domestic product (GDP). Global poverty thresholds per year and per adult equivalent remain very low: CFAF 56,500 in rural areas and CFAF 135,000 in towns. Food poverty thresholds are estimated at CFAF 38,800 and CFAF 62,500 respectively. Over half of all rural households fall below the poverty threshold or are vulnerable to poverty, according to the results of the population and health census conducted in 1996. In terms of development, Benin is ranked 144 worldwide, which is a marked improvement over its former position. In 1993 it had been ranked 162 by the United Nations Development Programme (UNDP).

I. INFORMATION OF A GENERAL NATURE

A. General legal framework for the prohibition and elimination of torture in Benin

15. For decades Benin was notorious for violating human rights and individual freedoms. This state of affairs reached its apogee during the revolutionary period from 1972 to 1990. With the changes that took place after the Active Forces of the Nation Conference, a movement was begun in earnest that allowed the many groups that had struggled against human rights violations to come out of hiding. One could say that Benin then left the group of 149 countries cited by Amnesty International. A day against torture and ill-treatment is even observed on 7 May.

16. Massive violations of human rights and individual freedoms are thus but a distant memory. The elimination of states of emergency is one of the steps that has helped to achieve the desired goals. Nevertheless, some backsliding occasionally occurs in the form of arrests and arbitrary detentions, unduly prolonged police custody and infrequent cases of violence reported by citizens to the ordinary courts or to the Constitutional Court. This development has been made possible by the Constitution of 11 December 1990, which, by virtue of the rules it sets out, has led to such positive changes as the strengthening of Beninese citizens' rights and freedoms.

B. Constitutional provisions and consequences

17. In its preamble the Constitution reaffirms the Beninese people's fundamental opposition to "any political regime founded on arbitrariness, dictatorship, injustice, corruption, misappropriation of public funds, regionalism, nepotism, confiscation of power and personal power". The Beninese people has thus expressed its firm will to defend and safeguard its dignity in the eyes of the world and to position itself as a pioneer of democracy and the defence of human rights in Africa.

18. The Constitution also solemnly affirms the country's determination to create a State governed by the rule of law, a State of pluralistic democracy in which fundamental human rights, civil liberties, the dignity of the human being and justice are guaranteed, protected and promoted as a prerequisite for the genuine harmonious development of every Beninese citizen, temporally, culturally and spiritually.

19. With regard to human rights as construed in the 1945 Charter of the United Nations, the Universal Declaration of Human Rights of 1948 and the African Charter of Human and Peoples' Rights, which the Organization of African Unity (OAU) adopted in 1981 and ratified on 20 January 1986, the Beninese people reaffirms its commitment to all principles associated with those international instruments, which have a higher standing than domestic law. In addition, by stipulating in article 8 that the human person is sacred and inviolable, the Constitution expresses Benin's determination to combat torture and other cruel, inhuman or degrading treatment or punishment.

20. In an effort to remain consistent with its new human rights policy, Benin has adopted a number of texts that attest to its determination and provide regulatory and legislative support for efforts to combat human rights violations, especially torture. These include Act No. 90-028

of 9 October 1990, which provides for an amnesty for acts, other than those covered by ordinary law, committed from 26 October 1972 to the date of promulgation of the Act, and Decree No. 90-374 of 4 December 1990, which establishes a joint ad hoc commission for the implementation of the aforementioned Act and is applicable to persons sentenced to death for political reasons or for their trade union beliefs. Decree No. 91-95 of 27 May 1991 should also be mentioned; this decree established an inter-ministerial commission to consider the question of a national day for victims of torture and ill-treatment and propose a date on which to observe it. This commission was also asked to conduct a census of victims of torture and ill-treatment and to learn the circumstances in which some of them disappeared.

21. Other steps have been taken with a view to banning torture and other forms of ill-treatment or inhuman treatment. These include:

- Closing of the "Petit Palais", a detention centre which was also the headquarters from which orders were issued for the arrest, detention and torture of persons suspected of having anti-revolutionary attitudes or positions or having made anti-revolutionary remarks;

- A campaign to halt arbitrary arrests and ill-treatment in police stations, gendarmeries, military camps and so forth;

- Improvement of the living conditions in prisons;

- Restoration by administrative or judicial means, of property that was arbitrarily confiscated by the authorities from political exiles who were suspected or known anti-revolutionaries;

- Liberalization of the press;

- Efforts to ensure that the 48-hour limit on detention for investigation is observed;

- An end to the serving of acknowledgements of debt or other discharges under physical or moral duress in detention facilities;

- Liberalization of religious practices;

- Authorization given to certain non-governmental organizations (NGOs) to conduct their activities.

22. It should also be noted that a number of structures and associations that work with the Ministry of Justice exist or have been established to combat human rights violations; this suggests that the changes that have occurred since the historic Active Forces of the Nation Conference have had a positive impact on the lives of people in all groups at every level of society in Benin. These structures include:

- The Benin Human Rights League;

- The Benin Human Rights Commission;

- The Association of Women Lawyers of Benin;
- Amnesty International - Benin;
- Defence for Children - Benin;
- Association for the Promotion of Human Rights;
- Action by Christians for the Abolition of Torture;
- The Beninese Red Cross.

23. To demonstrate its commitment to the defence of human rights, Benin has ratified or acceded to several international human rights instruments, which include the following:

- International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted on 30 November 1973 and ratified by Benin on 30 November 1974;
- Slavery Convention of 25 September 1926, ratified by Benin on 4 April 1962;
- International Covenant on Economic, Social and Cultural Rights, adopted on 16 December 1966 and ratified by Benin on 12 March 1992;
- International Covenant on Civil and Political Rights, adopted on 16 December 1966 and ratified by Benin on 12 March 1992;
- Convention on the Rights of the Child, adopted on 20 November 1989 and ratified by Benin on 3 August 1990;
- African Charter on the Rights and Welfare of the Child, adopted in July 1990 and ratified by Benin in May 1996;
- Convention on the Elimination of All Forms of Discrimination Against Women, adopted on 18 December 1979 and ratified by Benin in 1981;
- International Convention on the Elimination of All Forms of Racial Discrimination, adopted on 21 December 1965;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the subject of this report), adopted on 10 December 1984 and ratified by Benin on 12 March 1992.

24. A national committee made up of representatives of all ministries has been established by Decree No. 96-433 of 4 October 1996 to monitor the implementation of these international instruments. As the people of Benin have become increasingly aware of the need to respect human rights, this development was immediately embraced by most citizens.

25. The mass media and the various non-governmental structures set up immediately after, or, actually, with the return of democracy are extremely vigilant and denounce any act that runs counter to the Constitution where citizens' rights and freedoms are concerned.

26. In addition, certain legal texts, chiefly the Criminal Code and the Code of Criminal Procedure, have been undergoing revision and updating for some time. A draft Personal and Family Code and a bill on civil status are among the texts under consideration by the National Assembly. Also before the Assembly are bills dealing with the status of opposition parties, exercise of the right to strike, the advertising code, organization of the judiciary, the status of magistrates and educational policy.

C. The Constitution and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

27. As stipulated in article 147 of the Beninese Constitution, treaties or agreements lawfully ratified shall have, upon their publication, an authority superior to that of laws, subject to, for each agreement or treaty, its application by the other party. Benin therefore recognizes the supremacy of the Convention against Torture over national legislation, and the provisions of the Convention may thus be invoked and applied in any national court, be it administrative, legislative or judicial.

28. A reading of the Convention, particularly its substantive provisions, indicates that each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction and shall ensure that such acts or attempts to commit such acts are offences under its criminal law punishable by penalties which take into account their grave nature. Article 9 of Benin's Constitution recognizes that any person who commits acts of torture, ill-treatment or any other cruel, inhuman or degrading treatment or punishment shall be held responsible for them under the law. Consequently, any act of torture constitutes a violation of the Constitution.

29. The Constitutional Court is competent to try all violations of fundamental human rights and civil liberties. Thus it hears matters involving any incident or act covered by the Convention against Torture. It is the highest jurisdiction of the State and often hears cases when citizens consider that they have been the victims of acts of torture or barbarism, unlawful arrests or arbitrary detention. Its decisions cannot be appealed and are binding on all other courts. Under article 125 of the Constitution, the judicial power is exercised by the Supreme Court and by the other courts and tribunals established in accordance with the Constitution.

30. Act No. 64-28 of 9 December 1964, concerning the organization of the judiciary, recognizes the jurisdiction of the courts, the Appeals Court and the Supreme Court. Order No. 21-PR of 26 April 1966 concerns the composition, organization, functioning and responsibilities of the Supreme Court. Under article 31 of this order, the administrative division

of the Supreme Court has jurisdiction over proceedings to quash an administrative act for illegality and, when so ordered by the judiciary, appeals for interpretation and determination of the legality of acts by the administrative authorities.

31. The judicial division has jurisdiction over all branches with regard to incompetence or violation of the law or custom in respect of court decisions and judgements issued without right of appeal. It also has jurisdiction over:

- Applications for review;
- Applications for transfer of jurisdiction for cause;
- Applications relating to conflict of interest involving a judge or court;
- Conflicting judgements or sentences issued without right of appeal by different courts in respect of the same parties and the same cases.

32. Administrative authorities in Benin who can also hear cases involving human rights violations are:

- The Ministry of the Interior, Security and Territorial Administration, for acts committed in police stations;
- The Ministry of Defence, for acts committed by gendarmerie squads or in military or gendarmerie camps;
- The Ministry of Justice, Legislation and Human Rights, for all acts;
- The Ministry of Foreign Affairs and Cooperation, for cases involving judicial assistance and extradition;
- The Office of the President of the Republic, for all acts.

D. Remedies available to torture victims and mechanisms for combating torture in Benin

33. Anyone who is a victim of torture has several remedies available:

- The Constitutional Court, which rules on the constitutionality of an act;
- Judicial remedy, with all procedural guarantees in courts of first instance, appeals courts and the Supreme Court;
- Administrative remedy, through complaints lodged with the highest ranking relevant body or an administrative judge;

- Remedies available through various human rights structures such as:

The Beninese Human Rights Commission, established by Act No. 89-004 of 12 May 1989, which is a self-financing legal entity. Its two main missions are to promote and to protect human rights (see paragraphs 106 and 107 of this report);

The Human Rights Defence League, founded in 1990, seeks to denounce all violations or attempted violations of human rights and to uphold the rights of victims, particularly victims of torture or other cruel, inhuman or degrading treatment (see paras. 108-112);

Amnesty International, whose goal is to promote respect for the provisions of the Universal Declaration of Human Rights. The Beninese section was established in 1990. It supports the work of organizations and institutions that are involved in implementing the Declaration (see paras. 113 and 114);

The Study Group on Democracy and Economic and Social Development, established on 19 May 1990 to promote democracy in Benin in order to accelerate economic and social development;

The Institute for Human Rights and Democracy in Daily Life, established on 14 April 1993 to teach basic human rights concepts and democratic principles throughout the country;

Action by Christians for the Abolition of Torture, established in Benin on 17 August 1990 (see para. 115). Pursuant to article 5 of the Universal Declaration of Human Rights and article 18 of the Constitution, this organization seeks to assist in the development, promotion and dissemination of legal instruments to combat torture and to be a force for prevention and human rights education in order to ensure that no one is subjected to torture or to cruel, inhuman, degrading or humiliating punishments or treatment.

The Association of Women Lawyers of Benin, established on 20 January 1990, seeks to uphold human rights, especially women's and children's rights (see para. 119);

Defence for Children International has a section in Benin which was created in June 1990 and works to promote and defend the rights of the child. The organization promotes awareness of children's rights, conducts training and education in that area and offers legal advice. It also deals with working children, particularly children working as servants, and endeavours to ensure that their rights are respected (see para. 120).

The Beninese Red Cross, established in 1959,. operates on the basis of the Geneva Conventions of 12 August 1949 and the Protocols additional thereto, working impartially to prevent human rights violations and to relieve human suffering (see paras. 116-118).

E. Rehabilitation programmes

34. Act No. 90-028 of 9 October 1990, establishing an amnesty for acts, other than ordinary offences, committed from 26 October 1972 until the date of its promulgation, provided for the release of torture victims and the creation, under Decree No. 90-374 of 4 December 1990, of an ad hoc joint commission to oversee its implementation, pursuant to the provisions of articles 4 and 6 of the Act. Decree No. 91-79 of 13 May 1991 set out the conditions and modalities for implementation of the Amnesty Act. A series of ministerial orders was also issued by the Minister of Justice and Legislation and the Minister of the Interior with a view to drawing up lists of persons who would benefit from the provisions of the Act.

35. While a specific rehabilitation programme does not exist, efforts have been made to reintegrate torture victims in society. An inter-ministerial committee was established by Decree No. 91-95 of 27 May 1991 for the purpose of compiling a list of torture victims and considering ways of making reparations. Civil servants have been reinstated in their posts with all their entitlements and workers other than civil servants have been compensated on the basis of a daily rate fixed by the committee. Pursuant to resolutions issued by the Active Forces of the Nation Conference, a day has been designated to honour the memory of victims of torture and ill-treatment under the military Marxist regime. This day was celebrated for the first time on 7 May 1994. On that occasion the Minister of Justice and Legislation issued a message to the nation. Religious services were held and statements by members of civil society were recorded.

F. Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Benin

36. Benin has been a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 12 March 1992 and its initial report to the Committee against Torture was due on 10 April 1993. Since that time there has been a significant change in the human rights situation in the country. While massive violations had occurred prior to the Active Forces of the Nation Conference, human rights NGOs now monitor Benin's compliance with its international human rights obligations, including those aimed at combating torture and other cruel, inhuman or degrading treatment or punishment.

37. For its part, Benin has expressed its political will and its desire to guarantee fundamental rights and individual freedoms more effectively by reorganizing the Ministry of Justice and Legislation, expanding its traditional activities for the protection and promotion of human rights. Paragraph 7 of Decree No. 97-30 of 29 January 1997, concerning the responsibilities, organization and functioning of the Ministry of Justice, Legislation and Human Rights, provides for a Human Rights Office (see annex 5) responsible for the promotion and defence of human rights. Its tasks include:

- Making Benin's domestic legislation more consistent with the provisions of international instruments;

- Visiting detention centres to assess the conditions of detention and prisoners' living conditions and to prevent any unlawful or arbitrary detentions;

- Verifying allegations of human rights violations and following up all complaints of violations;

- Working to protect and defend the rights and freedoms of citizens, persons deprived of liberty, foreigners and refugees;

- Promoting and guaranteeing all rights accorded to women and children under international human rights instruments.

38. It should also be noted that Benin's clear commitment is reflected in the establishment of a national committee to monitor the implementation of international instruments; its members have already undertaken training organized by the Ministry of Justice, Legislation and Human Rights in cooperation with the Centre for Human Rights and the UNDP office in Benin. With regard to the obligation of States parties to the Convention against Torture to incorporate the provisions of the Convention in their domestic legislation, it will be noted that to date (four years after ratification of the Convention) no specific piece of domestic legislation defines or provides for punishment of torture. Thus victims can only bring court proceedings in respect of acts that imply torture, either materially or in criminal terms.

II. COMMENTS ON ARTICLES OF THE CONVENTION

Article 2

39. Benin's domestic legislation does not define torture. However, the inter-ministerial commission established under Decree No. 91-95 of 27 May 1991 to carry out a survey of victims of torture and ill-treatment in Benin, found that torture was frequently considered to be inhuman treatment or punishment and recognized that it went beyond a mere violation of physical integrity. Given that torture techniques have developed considerably over time and vary from one culture to another, the commission adopted the definition of torture given in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975.

40. According to the Declaration, "torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons". This definition is in substance the same as the definition in the Convention, although the latter is more complete and specific as regards the perpetrators of acts of torture, and the concept of victim has been broadened to include third parties.

41. Thus it can be seen from a reading of article 1 of the Declaration that the commission did not take account of all the definitions included in paragraphs 1 and 2 or of the definition suggested in article 2.

Penalties and preventive measures

42. According to article 8 of the Constitution, contained in Act No. 90-32 of 11 December 1990, the human person is sacred and inviolable, and the State has an obligation to respect and protect it. According to article 15, every individual has the right to life, liberty, safety and personal integrity. Article 18 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In addition, no one may be detained in a penitentiary establishment except under the provisions of a criminal law currently in force. Article 18 sets forth the rights of detainees and accused persons and guarantees their right to be examined by a doctor of their choice. The period of detention may not exceed 48 hours except by decision of the presiding magistrate. It may be extended only in cases provided for by law and may not exceed eight days. Under article 19, anyone found guilty of committing an act of torture or cruel, inhuman or degrading treatment or punishment in the course of the performance of his duties, or while on duty, whether on his own initiative or under orders, shall be punished in accordance with the law.

43. Even a cursory reading of these provisions shows Benin's desire to prevent and punish torture and all cruel, inhuman or degrading treatment. Title II, chapter 1 of Benin's current Criminal Code provides for the punishment of crimes and offences against the person. The Constitutional Court occasionally receives complaints of arbitrary or wrongful detention and of beatings, violence and physical torture during detention.

Article 3

44. The prohibition on extradition of a person to another State where he may be in danger of being subjected to torture can be deduced, by interpretation, from all the judicial cooperation agreements concluded between Benin and other States (with the exception of the Extradition Treaty of 10 December 1984, which is less specific on the issue), as indicated by the General Agreement on Judicial Cooperation, article 42, paragraphs 1 and 2, and the Agreement concerning cooperation in the field of justice, article 54 (LIV) (see annexes 7-9).

45. These two articles recall that States parties should not extradite their own nationals, for obvious reasons. However, while several articles in existing conventions set out extradition procedures, none of them addresses the problem of which authority should take the decision to extradite, or with how such a decision should be contested and what procedure to follow. All that is said in the Agreement concerning cooperation in the field of justice, articles 7 and 60 (LX), is that "the request for extradition shall be made through the diplomatic channel". Only article 49, paragraph 1, of the General Agreement on Judicial Cooperation states clearly to which authority the request should be addressed: "The request for extradition shall be addressed directly to the Procurator-General of the requested State."

46. Regrettably, then, these instruments not only fail to indicate clearly and precisely who should take the decision on extradition, but also say nothing about the possibility of contesting the decision. Nor do they describe the procedure to be followed in cases of appeal - on which,

incidentally, there are no statistics. In the absence of specific references to these matters, it is hard to know exactly what kind of training decision-makers need in order to know enough about extradition to realize that a person to be extradited may be in danger of being subjected to torture.

Article 4

47. The current Criminal Code contains a number of provisions prohibiting various offences that may in effect be considered as torture. Article 186, for example, prohibits abuse of authority against individuals: "Any civil servant or public official, government or police administrator, agent or officer, judicial marshal or police commandant or deputy commandant, who, without just cause, uses violence or causes violence to be used against persons in the performance of his duties or while on duty shall be punished according to the nature and extent of the violence used, and shall be liable to the penalty prescribed in article 198."

48. Penalties vary depending on the type of offence and may be augmented depending on the status of the perpetrator. In the case of a misdemeanour, the perpetrators will be liable to the maximum penalty prescribed for the offence. The penalties for such offences are as follows:

- Imprisonment, if the penalty in the case of any other perpetrator would be banishment and loss of civil rights;

- A period of forced labour, if the penalty in the case of any other perpetrator would be imprisonment or detention;

- Forced labour for life, if the penalty in the case of any other perpetrator would be deportation or a period of forced labour.

49. With the exception of the above-mentioned cases, penalties are not normally augmented. As regards offences against individuals, murder, which is defined in articles 295 and 304 of the Criminal Code as intentional homicide, is punishable by forced labour for life, except when it is committed before, during or after another crime, or for the purpose of preparing, facilitating or committing another offence, or assisting the escape or ensuring the impunity of the perpetrators of an offence or their accomplices, in which case murder is punishable by death.

50. Criminals who employ torture or commit barbaric acts in order to commit their crimes are considered guilty of murder and are therefore punishable by death (Criminal Code, arts. 303 and 302). It should be noted that, although the death penalty has not been removed from the Criminal Code, in practice it has not been applied for several decades. More and more voices are being raised, particularly within civil society, to urge that domestic legislation be brought into line with international standards in this area.

51. Intentional beatings and injury are prohibited under articles 309 to 312 of the Criminal Code. Penalties vary depending on whether the offence was committed with premeditation or malice aforethought, whether it resulted in loss or amputation, loss of an eye or loss of use of a limb or any other permanent disability, whether there was any intention to kill, and whether the victim was a child aged under 15. The penalties imposed are many and varied. They range from

six days to two years, plus a fine ranging from CFAF 4,000 to CFAF 48,000, or either one if the beating or injury has not caused any illness or incapacity to work; in case of premeditation, the penalties range from two to five years' imprisonment, plus a fine of between CFAF 12,000 and CFAF 120,000. In all other cases the sentence may be imprisonment or a period of forced labour. The offence of castration is punishable under article 316 of the Criminal Code by forced labour for life, except if the person dies within 40 days, when it is punishable by death.

52. It is important to note that anyone who is guilty of an offence or crime may not be prosecuted or sentenced if the homicide, injuries or beatings were ordered in accordance with the law or by a legitimate authority, or occurred in self-defence (Criminal Code, arts. 327 and 328).

(a) Illegal arrest and abduction of persons

53. Illegal arrest and abduction of persons are punishable by a period of forced labour. This punishment applies to both perpetrators and their accomplices, including anyone who makes premises available for the arrest or abduction to be carried out (Criminal Code, art. 341).

54. Under article 342 of the Criminal Code, any arrest or abduction lasting more than one month is punishable by forced labour for life. However, if the victim is released within 10 days, the penalty is reduced to two to five years' imprisonment. If the arrest is carried out using a false uniform or a false name, or under a forged order from a public authority, or if the person arrested, detained or abducted is threatened with death, the penalty is forced labour for life. If physical torture has been used on the victim, the perpetrators are liable to the death penalty (Criminal Code, art. 344).

(b) Other offences referred to in article 4, paragraph 1

55. With regard to attempts to commit torture, article 2 of the preliminary provisions of the Criminal Code stipulates that any attempt to commit an offence is subject to the same penalty as the offence itself if the perpetrator actually embarks on the attempt or if the attempt fails only through some circumstance beyond the perpetrator' s control. However, an attempted offence is considered equivalent to the offence itself only in cases explicitly provided for by the law.

56. Under Beninese criminal law, complicity is an ancillary act and must therefore be linked to a primary act punishable by law. Accomplices to an offence or a crime are therefore liable to the same penalty as the chief perpetrator, except when otherwise provided by law (art. 59). The exceptions are specified for each of the crimes or offences to which they apply. Thus an attempt is characterized by the mere fact that the accused acted with the aim and intention of committing the offence. It is therefore punishable by virtue of the fact that the offence was embarked upon and the victim was not immediately released.

57. Complicity implies the existence of a primary act that is punishable and defined as a crime or offence and involves cooperation or provision of means (gifts, promises, threats, abuse of authority or powers, or illicit schemes or trickery), weapons, instruments or any other means, instructions, help or assistance with the preparation, facilitation or execution of the primary offence.

Article 5

58. According to article 341 of the Code of Criminal Procedure of the Republic of Dahomey (Benin) of 7 August 1967, which is still in force, the court of first instance is competent to try offences and contraventions as defined by criminal law. Under article 342, the court that is competent to try offences is the court of the place where the offence was committed, or of the accused's place of residence or of the place where the arrest took place, even if the arrest was made for a different reason. The court is competent to try any offences and violations that are inseparable from the offence before it; it may also try related offences and violations. As regards the trial of violations, according to article 180 and subject to the above provisions, the only competent court is the court of the place where the violation occurred.

59. Only the Assize Court is competent to try criminal cases. It has full jurisdiction to try any individual referred to it by the indictments division (Code of Criminal Procedure, art. 207). It can be seen from these provisions that Beninese criminal legislation takes no account of the nationality of the accused in respect of acts committed on Beninese territory.

60. Title 9 of the Code of Criminal Procedure deals with offences and crimes committed abroad, either by Beninese nationals or by foreigners. Under article 557 of the Code, any offence of which one component was committed in Benin is considered to have been committed on Beninese territory.

61. Similarly, under article 558 of the Code of Criminal Procedure, any person of foreign nationality may be prosecuted and tried by the Beninese authorities for offences committed outside the national territory if he is arrested in Benin or if the Government obtains his extradition.

62. A victim of acts of torture may invoke the general provisions contained in articles 15 and 19 of the Constitution. Article 19 provides for the punishment under the law of any act of torture or cruel, inhuman or degrading treatment or punishment; article 15 proclaims the right of every individual to life, safety and physical integrity.

63. If anyone suspected of committing acts of torture is in Benin, the same rules of jurisdiction apply, without distinction as to origin or nationality and, in the case of a non-extradited perpetrator, regardless of nationality. Whichever competent body rules on guilt and passes sentence also settles any civil claims if it is able to give a decision on any claim for damages and costs. If it is not in a position to do so, it may grant an advance, pursuant to article 429 of the Code of Criminal Procedure.

64. All victims also retain the right to recourse to the civil courts, in accordance with articles 1382 ff of the Civil Code. Article 1382 stipulates that the perpetrator of any act that causes damage to another person is obliged to make reparation. The procedures to be observed in such actions are established in articles 4 to 6 of the Code of Criminal Procedure.

65. As can be seen from these provisions, a civil case is admissible if brought at the same time and before the same court in respect of material damages and physical or moral injury caused by the perpetrator of the offence being tried. If the civil and criminal actions are brought

separately, there is a stay of proceedings in the civil case. If the complainant in the civil case brings the perpetrator before a civil court, there are no grounds for subsequently bringing proceedings in the criminal courts in the same case. The Code of Criminal Procedure nevertheless allows the Public Prosecutor's Office to do so, provided no judgement has been handed down on the merits of the case. However, according to article 438 of the Code of Criminal Procedure, the unsuccessful party in a civil case is obliged to pay all or part of the costs, whatever his nationality, barring a special decision by the court.

Article 6

66. Under existing Beninese legislation, the concerns of article 6 of the Convention against Torture are to some extent addressed by article 40 of Decree No. 97-30 of 29 January 1997, which states that "Persons sentenced to imprisonment or subject to judicial proceedings or awaiting final sentencing shall be detained in penitentiary establishments; this shall apply to all detained persons irrespective of nationality".

67. Under article 39 of the 11 December 1990 Constitution, "Foreigners in the territory of the Republic of Benin enjoy the same rights and freedoms as Beninese citizens, as provided by law. They shall comply with the Constitution, laws and regulations of the Republic".

68. Any individual suspected of having committed an act of torture or having inflicted other cruel, inhuman or degrading treatment or punishment shall be subject to a preliminary investigation, in accordance with articles 43, 46, 50-53 and 64-66 of the Code of Criminal Procedure (see annex).

69. According to the General Agreement on Judicial Cooperation of 12 September 1961, ratified at Kinshasa on 28 January 1969, between Benin and 11 other African countries (art. 4) and the Agreement between the Government of the Republic of Dahomey (Benin) and the Government of the French Republic concerning cooperation in the field of justice concluded on 27 February 1975, the contracting parties shall have free, direct access to administrative and judicial tribunals and shall have the benefit of legal aid on the same terms as nationals, in accordance with domestic law (see annexes 7 and 9).

70. Together with the Extradition Treaty between the Republic of Benin and the Togolese Republic, these instruments stipulate that the extradition procedure may not be initiated without a petition from the requesting State. The request should be communicated through the diplomatic channel and should state the offences that are the subject of the allegations or proceedings, the time or place of their commission, the legal description, with references, the text of any legal provisions that are applicable in the requested State, and full information as to identity and nationality. It should be stressed that the extradition procedure can be initiated only in respect of a person who is being prosecuted or has been sentenced in the requesting State. A request for provisional arrest may be made pending the formal extradition request, but must be confirmed through the diplomatic channel.

71. The Code of Criminal Procedure devotes a special chapter to pre-trial detention and the enforcement of custodial and criminal sentences. Pre-trial detention must be served in a prison. The detainee may not be put to work to either within or outside the detention facility unless he so

requests. He must be guaranteed all communications or facilities consistent with his right to a defence and with the discipline and security requirements of the prison (Code of Criminal Procedure, arts. 568 and 571). Any person in pre-trial detention can obtain the aforementioned guarantees on application to the competent authorities through official channels.

72. The authorities responsible for implementing these provisions are criminal investigation officers and directors and head warders of prisons and detention centres. The following are considered criminal investigation officers:

- Officers, chief warrant officers, warrant officers and senior sergeants of the gendarmerie;
- Sergeants of the gendarmerie having passed a professional examination, by ministerial order of the Ministries of Justice and Defence;
- Police superintendents and officers;
- Police inspectors appointed after passing a professional examination, by ministerial order of the Ministries of Justice and Defence.

Article 7

73. Under article 39 of the Constitution, foreigners in the Republic of Benin enjoy the same rights and freedoms under the law as Beninese nationals. They must comply with the Constitution, laws and regulations of Benin.

74. Accordingly, any foreigner suspected of an offence and who has not been extradited must be tried in the same way as an accused Beninese national. In any event this is the procedure according to the provisions of Benin's current Code of Criminal Procedure. Article 1 stipulates that public action to obtain the imposition of penalties shall be initiated and conducted by magistrates or officials appointed by law or by the injured party.

75. The following authorities are responsible for prosecutions and pre-trial proceedings:

- Criminal investigation department:
  - Criminal investigation officers;
  - Police detectives;
  - Officials and agents who are granted certain powers of investigation by law, including mayors, village headmen, sub-prefects and prefects.
- Public Prosecutor's Office:
  - The Government Procurator and his deputies;

- The Attorney-General and his deputies.

- Examining magistrate

  The complainant may bring a complaint directly before the senior examining magistrate and file a claim for criminal indemnification. Benin has no legal provision authorizing such authorities to deal with perpetrators differently according to their nationality. Judgement should therefore be handed down in the same way as for any offence or misdemeanour defined by law.

76. The rules of evidence that apply in all cases are those set forth in articles 397 to 422 of the Code of Criminal Procedure. All forms of evidence are admissible under these provisions, including confessions, written reports, witnesses' testimony and exhibits. Regardless of the evidence used, however, the judge's decision shall reflect a firm conviction based on the evidence presented during the hearings.

77. As regards practical examples of the implementation of article 7 of the Convention, the Beninese courts have not tried any cases of foreign torturers. No example of any judgement in such a case can therefore be annexed to this report.

Article 8

78. Benin has signed a number of extradition agreements with other countries with a view to facilitating a regular exchange of judicial information on offenders who are nationals of one of the other States parties to the agreements and who are liable to criminal sentences.

79. The following are some of the instruments dealing with the area of justice, in chronological order:

- The General Agreement on Judicial Cooperation, signed at Antananarivo on 12 September 1961 and ratified at Kinshasa on 28 January 1969 by 12 African contracting States, including the Republic of Dahomey, as Benin was then known (see annex 7);

- The Agreement between the Republic of Dahomey (Benin) and the French Republic concerning cooperation in the field of justice, signed on 27 February 1975 (see annex 9);

- The Extradition Treaty between Benin, Ghana, Nigeria and Togo of 10 December 1984 (see annex 8).

80. All these instruments contain clear general provisions on the punishment of crimes and offences committed by offenders in the signatory States, but do not explicitly mention measures to combat all forms of torture. They do, however, strictly prohibit the extradition of a person for political and related offences, or for crimes or offences of opinion, or on grounds of race, religion or nationality.

81. According to article 44 of the General Agreement on Judicial Cooperation and article LVI of the Agreement concerning cooperation in the field of justice, "Extradition may be denied if the offence in respect of which it is requested is regarded by the requested State as a political offence or as an offence connected with a political offence". Article LVI also states that "the taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention".

82. Article 4 of the Extradition Treaty goes much further than the other two instruments, stipulating that "extradition shall not be granted in respect of a crime or offence of a political nature, or if it is claimed that a request for extradition has been made for the purpose of prosecuting or punishing a person for a crime or offence of a political nature, or if the purpose of the request is to prosecute or punish a person on account of his race, religion, nationality or political opinion".

83. Benin has seen few extraditions. One of the rare cases was the Banjo case, in which a Nigerian couple who were accused of illegal possession of arms and implements of war, were arrested and sentenced in Benin to 12 months' imprisonment by decision No. 396/B of 3 December 1996, handed down by the criminal division of the court of first instance at Cotonou. Nigeria's subsequent request for their extradition was denied in spite of the existence of an extradition treaty between Nigeria and Benin owing to the vigilance of the Benin Human Rights League, which protested the extradition and lobbied to stop the Beninese authorities from carrying it out.

84. The preamble to the Constitution proclaims the Beninese people's fundamental opposition to any regime based on arbitrary action. As a guarantee of judicial and legal safeguards, Benin since 1960 has had eight courts of first instance and a number of conciliation tribunals without any jurisdictional function or power. Benin has one appeals court, in Cotonou, which has jurisdiction over the entire national territory.

85. A Justice Summit held in Cotonou from 4 to 7 November 1996 provided an opportunity for all social and professional groups and governmental and non-governmental institutions to voice their opinions on Benin's justice system and to identify the challenges it faces, based on the problems encountered by professionals and users. The decisions taken there should make it possible to address the lack of human, material and financial resources and to try the enormous number of cases, thereby reversing the slow pace of the judicial system that deters people from seeking justice.

86. According to article 125 of the Constitution, "the judiciary is independent of the legislature and the executive. Judicial power is exercised by the Supreme Court, the courts and the tribunals". In the preamble to its programme of action, the Government has declared its determination to establish a State based on the rule of law. As a result of emergency measures taken by the Human Rights League on 10 and 12 June 1996, members of the Togolese opposition who had taken refuge in Benin were not forcibly returned to Togo as the Togolese authorities had requested (see annex 20 (b)).

Article 9

87. Judicial assistance is a principle that is embodied in all extradition instruments to which Benin is a party. For example, article 1 of the General Agreement on Judicial Cooperation stipulates that "the Contracting Parties shall institute regular exchanges of information relating to the organization of the judiciary, legislation and jurisprudence". Similar provisions can be found in article 1 of the 1975 Agreement concerning cooperation in the field of justice, which states that "the Republic of Dahomey (Benin) and the French Republic shall institute regular exchanges of information relating to the organization of the judiciary, legislation and jurisprudence".

88. The Extradition Treaty of 10 December 1984 is in fact the only text that does not specifically include an article on the subject. However, this willingness to exchange information can be readily seen in the contents of the preamble to the treaty, which reads: "the Contracting Parties [...] seeking to strengthen cooperation in judicial matters, desiring to combat crime in all its forms and, in particular, to facilitate the arrest and sentencing of offenders who might flee the territory of either Contracting Party to the territory of the other Contracting Party [...]".

89. Clearly, all these instruments have something in common: their preliminary general provisions reflect a concern with cooperation in judicial matters based on broad exchanges of information. Rogatory commissions frequently exist between States parties concerning crimes and offences of all types. However, cases specifically linked to torture, whether direct or indirect, are nearly non-existent in practice.

Article 10

90. Generally speaking, individuals engaging in the professions covered by this article are required, like all Beninese citizens, to comply with the provisions of the Constitution relating to human rights, particularly articles 8, 15, 18, 19 and 34 to 36 of the Constitution of 11 December 1990.

1. Civilian personnel

1.1 The police

91. Police officer training does not specifically make any provisions for information on the prohibition of torture. In practice, however, all police officers are taught - and it is in fact inculcated in every police officer - that they ought not to get involved in cases they are investigating. In courses on criminal procedure the classes on procedure, especially with regard to preliminary investigations, stress the need to respect the dignity of citizens and the obligation to refrain from inflicting violence or ill-treatment on those being interrogated. It seems clear, then, that such courses prohibit all forms of ill-treatment and torture.

1.2 Civil servants and employees of public agencies and services

92. Article 23 of the Code of Criminal Procedure stipulates that civil servants and employees of public agencies and services, who enjoy certain powers as criminal investigation officers by virtue of specific legislation, shall exercise these powers under the conditions and within the

limits prescribed by law. Heads of arrondissements, villages or neighbourhoods may immediately report to gendarmeries or police stations any crimes and offences that are brought to their attention. They may secure evidence, clues, weapons and instruments likely to disappear until the criminal investigators arrive and, in the case of flagrant crimes or offences punishable by prison sentences, they must apprehend the perpetrators and see that they are brought before the nearest judicial authority.

2. Military personnel

2.1 Gendarmes

93. The gendarmerie is governed by Decree No. 95-383 of 22 November 1995 (see annex), concerning the responsibilities, organization and functioning of the National Gendarmerie. It constitutes part of the national armed forces and an integral part of the country's administrative, judicial and military apparatus. Under articles 1 and 3 of this decree, the gendarmerie is considered to constitute a human force at the service of the State and the people, and is responsible for ensuring public safety and public order as well as the application of laws and regulations. It plays a role in the area of information, is involved in the defence of the country and provides ongoing oversight, through prevention and repression, for the various ministerial departments, especially the Ministry of Defence, of which it is a commanding body (Decree No. 97-143 of 25 March 1997, concerning the responsibilities, organization and functioning of the Ministry of Defence, article 12) the Ministry of the Interior and the Ministry of Justice.

94. The Office of the Gendarmerie is responsible for the recruitment and training of gendarmes on the basis of government guidelines (art. 18). It consists of three regional groups established by decree which have under their command the gendarmerie units of the départements and special bodies.

95. It must be noted that the prohibition against torture is not presented in the courses taught at the National Gendarmerie. Recently, however, some programmes have been set up. In July 1997, for instance, the Office of the United Nations High Commissioner for Refugees (UNHCR) offered a series of lectures over a period of a month and a half to trainees. At the beginning of August 1997, as part of efforts to promote international humanitarian law, trainee gendarmes attended a two-week seminar which considered how to question prisoners and victims in time of war without harassing or torturing them. The trainees' enthusiasm and the instructors' obvious desire to see such positive experiences replicated and even incorporated in gendarme training as a standard feature are encouraging signs that the treatment shown to citizens in peacetime is undergoing a change.

96. On a broader level, the mission of the National Gendarmerie is to serve a State governed by law in which dignity and respect for the human person are the rule. This is reflected in the courteous attitude of gendarmes. The fundamental principles of the gendarmes' code of ethics, which are posted in gendarme units, place great emphasis on public relations. In carrying out its mission, the National Gendarmerie has a duty to assist anyone in danger; gendarmes are thus responsible for ensuring personal safety. It should also be noted that in the preparatory courses for the criminal investigative officer examinations, gendarmes are acquainted with the proscription against torture.

2.2 The army

97. Soldiers have no authority, save in exceptional situations, to conduct investigations or to punish individuals for acts they are suspected of having committed. Soldiers are not trained to intervene in these areas, which implies that they should not intentionally inflict severe pain, whether physical or mental, for the purpose of obtaining information or confessions, in accordance with article 1 of the Convention.

98. However, during the revolutionary period from 1972 to 1990, some soldiers had political responsibility for investigating offences of opinion or supposed crimes against State security and in the course of their investigations used force and violence. Today they account for the overwhelming majority of torturers who are notorious in Benin.

99. After the Active Forces of the Nation Conference in February 1990 a new organization was set up. The People's Armed Forces of Benin, which had previously assumed the functions of the police, the gendarmerie and the army, were reorganized, with the result that these functions are once again separate. Today military personnel fall under the supervision of the Ministry of Defence, which is governed by Decree No. 97-143 of 25 March 1997 (see annex 2). This Decree stipulates that the Ministry of Defence is the guarantor of efforts to ensure that Benin remains a country governed by law. Article 23, on the Office of Programming, Outlook and Military Cooperation, tasks the Ministry with reviewing Benin's strategic policy. Article 24 sets out the ways in which the measures needed to protect information, objects, documents or processes relating to defence within the armed forces and bodies under the Ministry of Defence are to be coordinated.

100. Even though the military curriculum does not officially incorporate education and information on the prohibition of torture, courses entitled "Human rights", "Civic freedoms", "Criminal procedure in theory" and "Criminal procedure in practice" are offered to criminal investigation officers-in-training. These courses have been supplemented for several years by training seminars on human rights in general and international humanitarian law in particular as part of efforts to disseminate and effectively implement the Geneva Conventions of 12 August 1949 and the Protocols additional thereto.

101. The goal of this education is to prepare junior officers to work effectively with criminal investigation personnel as dictated by law and to make them more effective members of a team. The programme, which has existed since 11 February 1997 in the form of training sessions and refresher courses for staff of the National Gendarmerie, simply reinforces Benin's genuine commitment to uphold the provisions of the international instruments it has ratified.

3. Medical personnel

102. The Faculty of Medicine of the University of Benin trains students in health sciences. It is under the supervision of the Ministry of Education and Scientific Research. The course of studies lasts for seven years before students can specialize and is organized as follows: an initial five years of course work and internships, residency during the sixth year followed by a year for preparation of a Sate thesis in medicine. Before they begin to work, all doctors in Benin must take the Hippocratic oath, which requires them to adopt a positive attitude to human life. This

oath sets out general principles of medical ethics with regard to the right to health. The underlying theme of medical education in Benin is to protect physical and mental well-being and to help people regain their physical and mental health through the most appropriate means. The curriculum is designed by the Dean of the Faculty of Medicine with the help of his teaching staff.

103. Torture is included in the curriculum and is studied primarily in courses on forensic medicine which are offered in the fifth year. Foreign experts are often invited to teach these courses. Medical students do not learn about the legal aspects of torture, nor do they study the elements that may constitute torture as an offence punishable by criminal law or the corresponding penalties. Training focuses on anything having to do with human beings: rape, torture, wilful assault and battery, homicide and murder, and all other types of violence. It helps medical personnel to recognize quickly the injuries such acts cause.

104. It should be stressed that a two-year course in medical psychology which includes materials on torture is offered from the first year. This training is aimed at enabling doctors to identify, on the basis of those injuries observed on the victims, the causes of those injuries and the methods used by the perpetrators. The study of injuries makes it possible to confirm or determine the victim's sex and age and whether the victim was a child or an adult. This programme has not undergone any significant modification since ratification of the Convention against Torture.

4. NGO participation in education and information activities relating to the prohibition of torture

105. It is difficult to say that NGOs play a role in training that deals specifically with the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. They most often propose general training in human rights and individual freedoms. NGOs are quite active in efforts to combat human rights violations of any type. They denounce flagrant violations by means of information programmes, conferences, seminars and publications. As regards torture, many activities have been undertaken by a number of NGOs. The following are cited by way of example:

4.1 Benin Human Rights Commission

106. Established by Act No. 89-004 of 12 May 1989, the Benin Human Rights Commission is involved in all efforts to promote or defend human rights. As part of its work to promote human rights, the Commission has organized several seminars and conferences on a number of topics in all of Benin's départements. It has also translated the Universal Declaration of Human Rights into eight national languages. It is actively involved in the observation of Human Rights Day in Benin, which is held on 21 October.

107. In its work to defend human rights, the Commission seeks to combat various human rights violations; it provides advisory services and organizes unannounced visits to police

commissariats, gendarmerie units or other detention or arrest facilities. Its tools include press releases, public condemnations (on the radio, in newspapers and on television) and seminars or conferences. It is preparing a report on the state of human rights in Benin and has also begun to implement a human rights training programme for members of the public security forces, military and political leaders, and other institutions dealing with human rights.

4.2 Benin Human Rights League

108. The League issues regular publications, holds conferences and issues statements reporting on protests against specific instances of human rights violations and individual freedoms.

109. League publications include "La nomenclature des tortionnaires de la République du Bénin, de 1972 à 1991" ("A list of torturers in the Republic of Benin from 1972 to 1991"); a second edition has been published which updates the list to 1995. In this brochure the League has recorded a series of investigations which list the names of those who practised torture during the period in question, their commanders and their accomplices, with an accompanying list of victims for each case.

110. It is worth noting the League's definition of a torturer here: "A torturer is not necessarily the arm that strikes, but is first and foremost the person who gave the orders, who equipped the executing arm with weapons. A torturer is not any man in uniform. A torturer is not only a soldier, a gendarme or a police officer, he is also the civilian bureaucrat who ordered the repression and the imprisonment of innocent people."

111. In keeping with its urgent mission, the association of former political prisoners and victims of repression in Benin, out of which the League grew, has issued a publication entitled "White paper on torture in Benin, 1972-1990". The purpose of this publication was to denounce the human rights violations that occurred prior to 1990 and to inform national and international public opinion of the status of human rights in Benin under the revolutionary military regime of the Single Party of the People's Revolution. This document contains many accounts of the conditions in which arrests and detention took place, the treatment received by torture victims and the sequellae which they must deal with today.

112. Semi-annual reports are also issued and describe all League activities, including activities to combat torture. Publications issued on 25 October 1990 and 20 May 1991 discuss such topics as efforts of the organization and its affiliates in Benin to combat torture.

4.3 Amnesty International

113. This organization's activities are based on the indivisibility and interdependence of human rights and on the promotion of the rights set out in the Universal Declaration of Human

Rights and other international instruments. Amnesty International is a world voluntary movement that seeks to prevent Governments from committing some of the most serious human rights violations. It works to secure:

- The release of all prisoners of conscience, i.e. persons detained because of their beliefs, their colour or their language (and who have neither used violence nor advocated its use);

- Fair and prompt trials for political prisoners;

- Abolition of the death penalty, torture and other cruel treatment of prisoners;

- An end to political killings and disappearances.

114. Torture continues to be a major preoccupation of Amnesty International in many countries around the world. The Beninese section takes part in this mission by organizing human rights conferences and education campaigns and by issuing annual reports on violations perpetrated in Benin and on cases of torture or other cruel, inhuman or degrading treatment. It calls on the Government to ensure that all allegations of torture are investigated (see Report 1997, p. 375). Denunciation of human rights violations and publications are some of the section's information and education activities relating to the prohibition against torture. It should be noted that Amnesty International's annual reports for 1996 and 1997 did not deal with any reported cases of torture in Benin.

4.4 Action by Christians for the Abolition of Torture - Benin

115. This organization's work is based entirely on article 18 of the Constitution and article 5 of the Universal Declaration of Human Rights.

4.5 Beninese Red Cross

116. The Beninese section of the Red Cross was founded in 1959 and operates on the basis of the Geneva Conventions of 12 August 1949 and the Protocols additional thereto. Its mission is to prevent and relieve suffering with complete impartiality, without regard to sex, class, religion or political affiliation.

117. To this end it seeks to:

- Act in the event of armed conflicts and to be prepared to serve in peacetime as an auxiliary to the public health services in all areas covered by the Geneva Conventions and on behalf of all civilian or military victims;

- Help improve health, prevent disease and relieve suffering, according to national and local needs and conditions;

- Organize, in the context of the current national plan, emergency assistance for victims of disasters of any type;

- Recruit, teach and assign staff as needed to accomplish the tasks assigned to it;

- Disseminate the humanitarian principles of the Red Cross with a view to inculcating in the population, particularly children, the ideals of peace, respect and mutual understanding among individuals and peoples.

118. In the area of dissemination and information, the Beninese Red Cross is trying, with the help of the International Red Cross delegation of the Lomé office, to strengthen the promotion and dissemination of international humanitarian law in primary and secondary schools, the university and police and gendarmerie barracks and academies.

4.6 Association of Women Lawyers of Benin

119. This organization offers training in human rights and especially women's rights. As part of its efforts to increase awareness of the Family Code, the Association has opened legal aid centres which deal with legal issues, focusing on specific problems in this area. The Association has also begun a large-scale training programme for law students in different parts of Benin, including Dangbo in the south, Savalou in the centre and Parakou in the north-east. Fundamental concepts of law are discussed and legal guides have been prepared to assist with this task.

4.7 Defence for Children International

120. The Beninese chapter of this organization offers education in children's rights. Training is provided during conferences and seminars, such as the seminar on the right to life and customary practices in Benin, held at Parakou in November 1995, which was organized in collaboration with the Beninese Association for Child and Family Welfare. The objective of the seminar was to combat violations of children's rights that occur for cultural or sociological reasons and involve the abandoning or rejection of children, physical or mental torture and even cultural infanticide. The reports of these seminars are transmitted to the State agencies that deal with children's issues. Defence for Children is also concerned with torture, both physical and mental, directed against children, and works with the Beninese Association for Child and Family Welfare to combat abuse and violence directed against children.

Article 11

(a) Police custody

121. Police custody is strictly regulated by the Code of Criminal Procedure and may not last, as a rule, for more than 48 hours. This time limit may be extended by 24 hours if the Government Prosecutor so orders on the basis of serious and consistent evidence against an individual which must be submitted in advance. Exceptionally, in cases explicitly provided for by law this time limit may be extended under article 18 of the Constitution, but may not in any case exceed eight days.

122. This deprivation of liberty by the police can be imposed by civil servants and soldiers who hold the status of criminal investigation officers under the law. For the purposes of an investigation, anyone present at the scene of a crime who can provide information about the incident may be taken into custody for 24 hours if the investigation is being conducted in the person's place of residence and 48 hours in all other cases. If evidence or clues are found that implicate a person in the offence, that person may also be taken into police custody. Under article 52 of the Code of Criminal Procedure, any criminal investigation officer must state in the deposition of any person held in custody how long the questioning lasted, the day and date on which custody began and the day and date on which the person was released or brought before a competent magistrate or placed at the magistrate's disposal.

(b) Monitoring conditions of detention

123. Benin is a party to all human rights conventions and the African Charter of Human and Peoples' Rights and upholds the guarantees that derive from those instruments, such as the right to a fair trial and the right to be treated with dignity and in accordance with international human rights standards.

124. These rights are upheld by the Constitutional Court, to which all citizens have access, and which is required to render a decision within a short period of time (eight days). In addition to this body, whose decisions cannot be appealed, the Prosecutors-General and the Government Procurator, in accordance with the Code of Criminal Procedure, are responsible for direct monitoring of the activities of the police and the gendarmerie, particularly as regards custody. In the course of their investigations, the police and gendarmes may not detain an individual for more than 24 hours without the authorization of a magistrate, whose duty it is to put an immediate stop to any arbitrary detention.

125. Moreover, when an individual detained by the police during an investigation appears to be the perpetrator of the acts that have given rise to the investigation, the person may not be subjected to torture or ill-treatment, no matter how serious the act was. If torture nevertheless occurs, the person may file a complaint against the torturers, who shall be held liable under the law. This was true in the case of Ibrahim Zakary versus Sergeant Billa Konso, chief on duty from 6 to 7 January 1990 in the military camp located near the Hotel PLM Aledjo, Sergeant Apollinaire Houkpatin, chief on duty from 7 to 8 January 1990, Private First Class Nicolas Agossou, on duty from 7 to 8 January 1990 in the same camp; and the person called Cosme Agoli-Agbo, a gendarme residing in the Banikani quarter of Parakou (see annex 20 (a)).

126. This was true also in the case of Boubacar Diawara versus Seïdou, Fousséni Gomina and Jean N'tcha. The accused were senior officers in the security services who, on the basis of a complaint brought by Mr. Diawara, were arrested, tried and sentenced for having inflicted ill-treatment on a detainee named Balde Samba Tene, who was alleged to have died from his treatment (see Amnesty International Report 1992). They were charged and tried for arbitrary arrest and detention, conspiring in deadly assault, extortion and breach of trust. The case is still before the indictment division, which is the final stage prior to the Assize Court, where persons may receive sentences ranging from forced labour to life imprisonment.

127. In any event, an accused person can be detained only if there are serious charges and a warrant has been issued by a competent judicial authority, whether an examining magistrate or, in cases of flagrante delicto, a government procurator. Detention must take place in humanly acceptable conditions, and the State is required to guarantee the detainee's safety, protect his health and provide means of subsistence.

128. Available information and reports indicate that persons in detention and all observers consider the living conditions in detention facilities to be tantamount to a form of torture and degradation of the human individual. Most detainees complain that they are underfed, receiving poor quality food or insufficient rations. In addition, although they are treated in clinics or hospitals when sick, it is virtually impossible for them to obtain prescription medicines. They must often rely on NGOs, missionaries or the good will of prison authorities to obtain pharmaceutical products.

129. It should also be noted that prisons are overpopulated, as the following table shows.

(c) Breakdown of the prison population

Civilian prisons	Sentenced persons	Persons charged	Persons accused	Total
Cotonou	506	580	245	1 331
Porto-Novo	273	345	139	757
Ouidah	184	78	30	292
Abomey	131	367	177	675
Athiémé	186	143	19	348
Parakou	140	98	39	277
Kandi	89	60	19	168
Natitingou	76	82	26	184

Total prison population: 4,032.

130. As at 17 November 1997 the civilian prison at Natitingou held a total of 171 persons: 165 men and 6 women, none of whom were minors. Of these, 63 had been sentenced and 108 were being held in pre-trial detention. The B5 block, known as "le Bateau" ("the Boat") measures 6 m by 10 m and alone accommodates 76 prisoners. It should be noted that this population represents a decline over the figures recorded on 24 September 1997, when the total number of prisoners stood at 184.

131. The same holds true for the prison population at Kandi, where on 14 November 1977 there were a total of 163 prisoners, as against 168 on 24 September 1977. In contrast, at Parakou there were 290 prisoners on 12 November 1997 as against 277 on 24 September 1997, or an increase of 13 prisoners. The most striking case is that of the civilian prison at Athiémé, where there are no buildings for minors and the prison population remains very high. The rough wall surrounding the prison is made of sheets of zinc and the roof is of thatch. There are no showers in the facility. Fortunately, prisoners will soon be housed in the new prison at Lokossa, which was built and opened in December 1997. Mention should also be made of the civilian prison at Natitingou, which is located on the site of the local market.

132. The efforts made by successive Governments have consistently proved inadequate. Government procurator's offices no longer release persons awaiting trial on bail. Today every government procurator must meet with any person awaiting trial and see the accompanying record immediately, and then indicate what steps must be taken to move the proceedings forward: judicial examination, flagrante delicto or private prosecution. Now only those persons on trial for whom a detention warrant is required are detained, which was not the case in the past. Accordingly, if the charges brought are insufficient or almost non-existent once the record has been considered, the person is immediately released and the proceedings continue without a warrant or the case is closed.

133. Judges are also attempting to make the lives of persons in detention less difficult. New prisons are being built with a view to improving living conditions. However, persistent crime keeps prison population levels fairly consistent. Moreover, most prisoners are repeat offenders, which makes it difficult to see the impact of the steps taken, since the number of new prisoners stays the same from day to day.

134. A project has been set up pursuant to Order No. 265/MJLDH/DC/SG/DAP of 16 October 1997 to improve the sanitary conditions of prisons. Under this Order a technical committee was established to monitor the extermination of rats and the disinfection and relocation of the civilian prisons at Porto-Novo, Cotonou and Ouidah. The committee is composed of representatives of the Ministry of Justice, Legislation and Human Rights (Office of Prison Administration and Office of Programming and Planning); the Ministry of Finance (Office of Contracts and Equipment); the Ministry of Health, Social Welfare and the Status of Women (Office of Hygiene and Sanitation); and the Ministry of Rural Development (Cotonou Fumigation Centre).

135. The technical committee's task is to verify the compliance with standards and quality of goods purchased as well as their expiration date and to monitor the volume of goods and equipment and the number of staff. Major sanitation operations were conducted pursuant to the above-mentioned Order on 9 October 1997 in the Cotonou civilian prison (with the Sotico company as contractor), on 14 October 1997 at the civilian prison at Ouidah (with Sotico as contractor) and on 3 November 1997 at the civilian prison at Ouidah (with the Medirat company as contractor).

136. In the light of detainees' complaints about food, an order was issued by the Minister of Justice concerning the food served in prisons. Order No. MJLDH/DC/SG/DAP of 18 November 1997 established committees in each civilian prison in Benin whose task is to oversee the food served to prisoners. These committees, which are chaired by the Government Prosecutor or his representative, are responsible for receiving and monitoring the distribution of prisoner rations. There are plans for prisoners to be served hot meals as of next year.

137. Decree No. 73-293 of 15 January 1973, concerning the prison system, regulates the treatment of prisoners in penal institutions. Article 65 gives the Social Office of the Ministry of Justice responsibility for providing prisoners with social assistance. In practice the bedding, weekly soap ration and laundry facilities provided for in article 59 are not made available to

prisoners. This lack is often met by NGOs working in prisons who provide all types of donations: food, medicines and other items. These organizations include the Red Cross, the National Lottery, the Beninese Human Rights Commission and a host of other bodies and individuals in the non-profit sector.

138. Violations of the prison administration regulations are punishable by withholding of visitation rights for a period not to exceed one month, withholding of the right to smoke, withholding of correspondence and withholding of the right to receive food from outside. Such offences may also be punishable by solitary confinement, which automatically implies the above four penalties, for a period not to exceed one month. The authorities empowered to mete out these penalties are the prison director, the Government Prosecutor and the Minister of Justice (arts. 45-48). The prison director may impose the first four penalties together with a term of solitary confinement for a period not to exceed eight days. The Government Prosecutor may impose solitary confinement for 30 days. The Minister of Justice may order solitary confinement for a period of 45 days, although article 47 of the above-mentioned Decree allows him to order up to three months' confinement. This penalty is implemented in two phases, with an interval of one month of regular detention after 45 days.

139. A prisoner wishing to lodge a complaint addresses it to the Government Prosecutor, the Procurator-General, the judge hearing his case or the president of the indictment division, depending on the case, or the office within the Ministry of Justice that deals with prison administration. Decree No. 97-30 of 29 January 1997, on the responsibilities, organization and functioning of the Ministry of Justice, Legislation and Human Rights, assigns to the Office of Prison Administration the following tasks: regulation, organization and monitoring of the application of punishments and management of the staff and equipment made available for these tasks. To this end, and to manage the prison population, the Office:

- Ensures that satisfactory living conditions are provided for all incarcerated prisoners;
- Monitors prisoners while they serve their sentences;
- Deals with problems relating to prisoners' requests for pardon, release on parole, rehabilitation and amnesty, in cooperation with the offices of the ministries responsible for security and social affairs;
- Controls the prison population;
- Implements and improves penitentiary legislation;
- Centralizes and makes use of the periodic reports of prison monitoring commissions;
- Participates in the implementation and monitoring of alternatives to incarceration;
- Prepares prisoners for their release and fosters their reintegration in social and professional life.

140. To this end, the authorities concerned visit prisoners in order to listen to them and assess their situation with a view to finding appropriate solutions; occasionally they meet with prisoners in their offices. Depending on the case, requests are forwarded to the competent forum for referral, adjudication and action.

141. Similarly, Decree No. 97-176 of 21 April 1997, on the responsibilities, organization and functioning of the Ministry of the Interior, Security and Territorial Administration, entrusts the Ministry with ensuring public order, including the internal and external security of the State, and taking all measures to prevent, identify and punish any acts that may disrupt the public order. The Ministry may therefore take any steps to regulate the civilian life of citizens and the movement of persons and goods, in accordance with the laws and regulations in force, and protect persons and property throughout the national territory.

142. To accomplish these goals the Ministry has the following special services:

- The Department of Foreign Affairs, which is responsible for national questions affecting the lives of the population; it also hears, through the Ministry, citizens' complaints and meets with citizens, listens to them and endeavours to reach an amicable settlement;

- The Security Forces Inspectorate, which is directly under the authority of the Ministry and monitors the work of the security forces and oversees the members of the security forces in their police work for the Ministry of the Interior; it also centralizes and redistributes information to enhance the effectiveness of action taken or to be taken as part of the fight against crime, the maintenance of public order and the safety of persons and property;

- The National Police Department, whose mission is to ensure respect, through the services of the police, for public order and the protection of State institutions, respect for civil liberties and the protection of persons and property.

Article 12

143. In Benin, the competent authorities under article 12 of the Convention to which victims often take their cases are:

- The Ministry of the Interior, Security and Territorial Administration, consisting of the Department of Internal Affairs, which deals with problems arising in daily life, the National Police Department, which brings together police superintendents and inspectors, and the Security Forces Inspectorate;

- The Ministry of Defence, covering brigade commanders and all criminal investigation officers working for the gendarmerie;

- The Ministry of Justice, Legislation and Human Rights, and the courts.

144. Once a matter has been referred to them, these institutions conduct investigations to determine responsibility in cases of torture or other cruel, inhuman or degrading treatment.

145. The administrative authority invites those concerned to appear before it to settle the case amicably or to clarify the facts before forwarding the case to the competent ministry for a definitive settlement in court. To that end, the case may be transmitted directly for a preliminary investigation, either through official police channels or through the local gendarmerie for assignment of jurisdiction.

146. The other possibility open to the victim is to take the matter to the public prosecutor or examining magistrate. A public prosecutor dealing with such an application must immediately notify the competent government procurator, who is responsible for organizing the investigation appropriate to the type of official concerned. The official might be a soldier, a police officer or a gendarme (who may or may not be a criminal investigation officer).

147. Provision for a special procedure is made only in article 551 of the Code of Criminal Procedure. If a criminal investigation officer is liable to be charged with a crime or offence allegedly committed in his assigned district, whether or not he was on duty at the time, the government prosecutor handling the case immediately submits an application to the judicial division of the Supreme Court, which considers it and makes a ruling, such as settling conflicts of jurisdiction, and designates the court that is to investigate or hear the case. The judicial division dealing with the matter must take a decision within eight days of receipt of the application.

148. Article 552 stipulates that until a case is referred to the court that is competent under the law, the proceedings are conducted according to the rules of jurisdiction of ordinary law. Under these provisions, an investigation established in accordance with ordinary law must be initiated impartially once the offence has been committed. This is what happened in the two cases cited in the comments on article 11 of this report. It also emerges from the 1994 report of Amnesty International that after the death in March 1992 of Gbéa Orou Sianni following his detention by the Ségbana gendarmerie, investigations were conducted to determine whether he died as a result of torture. The authorities were satisfied by a medical report which concluded that his death was due to acute hypoglycaemia, although they did not clarify whether that medical condition was the result of torture (see Amnesty International, Report 1994, p. 73).

149. Amnesty's 1995 report mentioned three farmers sentenced to prison terms for refusing to pay the local tax after being arrested at a meeting of the Communist Party of Benin (PCB). The report referred to the degrading treatment and torture to which the farmers and their visiting relatives had been subjected and which had not been investigated despite a request from their lawyer (see Report 1995, p. 72).

150. The two above-mentioned reports also cite the cases of three farmers, all members of the Migbé Aya ("we reject poverty") farmers' union, who were arrested in December 1992 and detained for roughly two years while awaiting trial on murder charges after being arrested for advising an individual to lodge a complaint following an attempted armed robbery involving several gendarmes. No investigation arising from reports that they had initially been held in chains was conducted.

151. Amnesty International pointed out that the courts do not generally investigate complaints of torture, beatings or other forms of cruel, inhuman or degrading treatment, and it urged the authorities to open independent inquiries into all allegations of torture.

Article 13

152. No provision in Beninese law permits any discrimination in proceedings against the victims of any criminal offence whatsoever. Every person, regardless of nationality, has the right to lodge a complaint with the competent authorities. The latter have a duty to begin an investigation immediately.

153. The authorities guarantee to every victim that the interrogation rules, methods and practices, referred to in article 11 of the Convention, will be respected and guarantee a prompt and impartial investigation, in accordance with article 12. The authorities cited in the comments on article 11 monitor the situation to prevent any ill-treatment or intimidation after a complaint is submitted.

154. There is no special provision establishing criteria for the investigation of allegations of torture by the Government Procurator. In fact, the procedure is the same as for every criminal case. The prosecutor or examining magistrate handling the case has the right, under article 34, paragraph 5, and article 38, paragraph 2, of the Code of Criminal Procedure, to call in the law-enforcement agencies directly. This prerogative allows them, where necessary, to protect complainants and witnesses from any ill-treatment or intimidation arising from a complaint or statement.

155. Under article 33 of the Code of Criminal Procedure, the Government Procurator receives complaints and allegations and decides on what action, if any, to take. He conducts or sets in motion, in accordance with article 34 of the Code, all the steps required for the prosecution of criminal offences and to that end directs the work of the criminal investigation officers or detectives within the court's jurisdiction. He may organize confrontations with witnesses or call for expert reports (art. 37).

156. Every complainant is notified by the Government Procurator of the date of the hearing. Anyone claiming to have been injured by a crime or offence may sue for criminal damages by lodging a complaint with the examining magistrate (Code of Criminal Procedure, art. 72). The complaint is sent to the Government Procurator so that the latter can take action against the person against whom the complaint is made or against persons unknown. Witnesses enjoy the same procedural guarantees as the complainant.

157. At the constitutional level, every competent authority handling a case is required, pursuant to article 7 of the Constitution, to respect the rights and duties proclaimed and guaranteed by the African Charter on Human a[illegible] Peoples' Rights, which are an integral part of the Constitution and of Beninese law. Article 7, paragraph 1, of the Charter provides that every individual has the right to have his cause heard. This right includes the right to an appeal to competent national organs against any act violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force, the right to be presumed innocent and the right to be tried within a reasonable time by an impartial court. However, to

avoid objections to his competence, any judge may withdraw by refusing to hear a case on the grounds of personal impediments such as family ties, sickness or leave. In such cases, a new judge is immediately appointed in his stead by the court administrator. Otherwise, he is guilty of denial of justice (Criminal Code, art. 185).

Article 14

158. Benin's laws and regulations provide for the right to reparation and fair compensation for every victim of torture. As noted in the comments on the preceding articles, every victim of torture may base his action on the provisions of articles 2 to 10 of the Code of Criminal Procedure, on the conditions for bringing a civil action, which can be done either at the same time as the criminal proceedings and before the same court, or separately.

159. Accordingly, once ill-treatment has been proved, torture victims, or their beneficiaries if they have died, have the right to reparation that is proportional to the injury suffered. It is the task of the Government Procurator, or any other judge or official entrusted with the task, to initiate criminal proceedings. This applies to the examining magistrate with whom a complaint is lodged by a person claiming to have been injured by a crime or offence, who may then bring a civil action (Code of Criminal Procedure, art. 72). In this case, if the party claiming damages and instigating the prosecution is not receiving legal aid, that person must pay the clerk of court the fee for the costs of the proceedings, or the complaint will be inadmissible. The amount of the fee is fixed by order of the examining magistrate. In principle, this deposit is small enough to be within reach of the litigant.

160. The party claiming damages is entitled to refer the case directly to the civil court. In this case, the compensation payable by the person responsible for the torture or other cruel, inhuman or degrading treatment or punishment must provide reparation not only for the physical harm suffered by the victim but also, where necessary, for any moral damage or loss of amenities. This is stipulated in article 1382 of the Civil Code, which, owing to its general language, applies to both moral and material damage (see comments on article 5).

161. A civil action may therefore be brought by anyone who has suffered harm as a direct result of an offence, thereby guaranteeing such individuals the right to fair compensation and adequate reparation. These legislative and legal measures are applicable to foreigners as well as Beninese nationals. In fact, under the provisions of article 39 of the Constitution, foreigners in Beninese territory enjoy the same rights and freedoms as Beninese nationals, provided that they comply with the country's Constitution, laws and regulations.

162. In criminal matters, court-awarded compensation may be enforced by committal for a period determined by the court hearing the case. In civil proceedings, decisions may be implemented by seizure of property.

Procedure for rehabilitation and compensation

163. To assess the victim's rights, the judge hearing the case may call for a medical and psychiatric report so as to form a general idea of the victim's mental or physical health. The

expert appointed for this purpose must draw up a report within the time limit set by the court (Code of Criminal Procedure, art. 140). The expert may also attend the hearing to give a further oral report in order to help the court reach a decision.

164. As has already been mentioned, torture victims can claim reparation by lodging a complaint with the administrative authorities (the President, Minister of the Interior, Minister of Justice, prefects, sub-prefects, mayors, district representatives and others). These authorities can either settle the matter amicably or forward the complaint to the competent judicial authorities.

Reparation for victims of torture

165. A study of the report produced by the inter-ministerial commission set up by Decree No. 91-95 of 27 May 1991 to draw up a list of victims of torture and ill-treatment led to a breakdown of cases by type of injury or harm suffered, grounds for arrest, acts of torture and other cruel, inhuman or degrading treatment or punishment, and sequellae suffered. An analysis of victims' statements reveals that they were held in very difficult, not to say unbearable, conditions. While each detention centre had its own peculiarities, the cells were generally very cramped, filthy, hot and dark.

166. In Ségbana, conditions were reportedly very harsh. Though the prison was opened on 6 November 1985, visits were not authorized until August 1988. The weather there is extremely hot or cold, depending on the season. Detainees were locked for 24 hours at a time on the slightest excuse. Mail took 40 to 45 days to reach the addressee, if it did not get lost altogether. The most dreaded detention centres, where living conditions were the most inhumane, included those in Ségbana, the Séro-Kpéra camp, PLM Aléjdo and Petit Palais.

167. Detainees depended on their families for food everywhere except Ségbana, where they were given CFAF 300 a day for their three meals, and the Séro-Kpéra camp, where they received the same soup as the soldiers. Cells measuring barely seven square metres accommodated as many as 30 people. Most detainees were subjected to forced labour, various forms of torture and ill-treatment such as cleaning out toilets, interrogations lasting from 8 to 12 hours and held at inappropriate hours, a form of torture known as the "rodeo", beatings and so forth.

168. The study reveals that many victims still bear the scars of torture inflicted on them during the Marxist-Leninist regime, between 1975 and 1989, before Benin ratified the Convention against Torture.

169. Some victims still suffer from, inter alia, disabilities of the limbs, deafness, visual impairment, sore eyes as a result of prolonged stays in the dark, impotence, heart disease, keloidal welts, depression, damage to the spine, the marks of injuries all over the body, missing teeth, dislocated collarbones, perforated testicles as a result of the "rodeo" torture, ulcers, nervous disorders, permanent inability to bend the fingers, scarring of the genitals, memory loss, open fractures of the fingers, digestive problems and permanent shoulder pain.

170. After hearing the victims' demands, the inter-ministerial commission proposed that the following should be done for those suffering from these after-effects:

- Salaries withheld from State officials should be paid to them and unpaid grants should be restored to students;

- The State should agree to pay for care for victims still suffering the sequellae of torture;

- Cases should be referred to the Minister of Justice for prosecution of the alleged perpetrators;

- A national day for the victims of torture and physical abuse should be instituted;

- A policy for the rehabilitation of torture victims should be established, giving them, among other things, preference in recruitment for jobs;

- An inquiry should be opened into what became of the salaries withheld from victims during their detention;

- Victims should be compensated for physical, material and emotional injury;

- A bill should be proposed which would make acts of torture imprescriptible as a crime against humanity.

171. The Beninese authorities have not formally set up any medical or psychological rehabilitation programme for torture victims in response to these proposals.

172. However, the authorities have financially compensated torture victims on the basis of the inter-ministerial commission's proposals, which set compensation for the injury suffered at CFAF 1,500 a day for non-public officials and CFAF 1,000 a day for public officials. A lump sum of CFAF 5 million per victim was awarded to the beneficiaries of victims who had died.

173. Moreover, public officials have been taken on again by the civil service, so that they have been able to resume their career and enjoy the rights they would have acquired if they had remained in their post. All this has been done without prejudice to any legal action for acts of torture. So far, compensation totalling CFAF 701,704,430 has been paid out to 1,247 torture victims (pupils, students, civil servants and private individuals).

174. However, there are still cases pending. People who were not on the list, or who were on the list but overlooked at the time of payment, continue to come forward. Including them could increase the amount released to CFAF 732,404,930. Nevertheless, it should be noted that the inter-ministerial commission is still dealing with many claims from people on the list of victims and from others who were not identified as victims and who are making claims for the first time.

175. For this reason, the Council of Ministers made the following recommendations at its meeting on 18 September 1997, when it decided to conclude the work of the inter-ministerial commission (case No. 202/97 introduced by the Ministry of Finance):

- The Ministry of Finance should pay only the compensation due to individuals already listed as torture victims and whose cases were approved by the Council of Ministers;

- The Minister of Justice, Legislation and Human Rights should submit within a week a draft decree establishing a standing committee on compensation to deal with cases pending;

- The Permanent Secretary to the Government should transmit to the ministers concerned the analytical note by the President's technical adviser, for action by them (see list of administrative decisions 41/SGG/REL of 18 September 1997, annex 23).

176. It should be pointed out that NGOs fought to have these measures adopted. The Human Rights League was particularly prominent in its attention to this matter. For example, the committee it set up to deal with the recovery of the salaries of former political prisoners and victims of repression sent a letter on 7 September 1994 to the Ministry of Finance about the freeze since January 1994 on paying out these salaries, objecting to the delays and all kinds of other obstacles which were, in the committee's view, a sort of mental torture even more odious than the original torture. The general assembly of the organi. ations involved in the national day for torture victims also produced, on 28 April 1994, a list of demands on behalf of those tortured under the People's Revolutionary Party, calling for fair compensation from the State for the victims and justice for the torturers and their leaders.

Article 15

177. In Benin, all torture victims are protected in any court trying them for an offence. By law, any statement or report of an offence is considered as information only.

178. Under article 397 of the Code of Criminal Procedure, the judge makes decisions in accordance with his personal convictions and can only base his decision on the evidence produced during the trial and brought before him. The criminal court concerned may set aside acts that it believes to be invalid and may decide whether its action should apply to the whole or part of the subsequent proceedings (Code of Criminal Procedure, art. 151). The general rules on the invalidity of the information also protect the victim from the introduction into proceedings of statements obtained under duress (Code of Criminal Procedure, arts. 148-181). Article 150 of the Code stipulates that no evidence against the parties in the trial may be drawn from acts that have been set aside.

179. Moreover, an analysis of the conditions necessary for a contract to be valid shows that there is no valid consent where consent has been given only by mistake or extracted by violence or overheard fraudulently (Civil Code, art. 1109). Articles 1111 to 1113 of the Civil Code, which deal with violence, stipulate that:

(1) Violence exercised against the person undertaking an obligation is grounds for invalidity even when it is exercised by a party other than the party for whose benefit the agreement is made (art. 1111);

(2) Violence occurs when an action is likely to make an impression on a reasonable person and when it may make such a person feel afraid to expose his or her person or property to significant and present harm, taking into account the age, sex and status of the persons (art. 1112);

(3) Violence is a ground for invalidating a contract not only when it has been exercised against the contracting party but also when it has been exercised against that person's spouse, descendants or ascendants (art. 1113).

180. The judicial authorities with jurisdiction over acts of torture and similar acts may not, under current legislation, use a statement obtained through violence or torture as evidence. Such statements are inadmissible as evidence under Beninese law.

Article 16

181. Articles 15, 18 and 19 of the Beninese Constitution cover all the topics raised in article 16 of the Convention. Under the terms of these provisions, no one may be subjected to torture, to abuse or to cruel, inhuman or degrading abuse or treatment, and any State official found guilty of such acts in the exercise of his duties, either at his own initiative or on the orders of someone else, shall be punished in accordance with the law. Article 15 of the Constitution guarantees each individual's right to life, liberty, security and integrity of person.

182. In addition, Benin's existing laws and regulations protect every citizen from any act that constitutes cruel, inhuman or degrading treatment or punishment, especially when such acts are committed by public officials or anyone else acting in an official capacity, either following orders or giving express or tacit approval. Thus, except in cases where the law orders the arrest of suspects, anyone who arrests, detains or illegally confines someone else without an order from the relevant authorities is liable to be sentenced to a term of hard labour under article 341 of the Penal Code.

183. Article 5 of the African Charter on Human and Peoples' Rights, which is an integral part of the Beninese Constitution, specifies that "Every individual shall have the right to the respect of the dignity inherent in a human being. [...] All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment, shall be prohibited." The protection due and guaranteed to every torture victim is therefore extended to victims of cruel, inhuman or degrading treatment. To this end, the rules mentioned in the comments on articles 11 to 15 are fully applicable, without any discrimination.